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OCT 20 2003

By: *B. Jackson*  
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OCT 14 2003IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISIONIN RE: TRI-STATE  
CREMATORY LITIGATION

MDL DOCKET NO. 1467

**FUNERAL HOME DEFENDANTS' RESPONSE  
TO PLAINTIFFS' MOTION FOR ENTRY OF AN  
ORDER ESTABLISHING A "COMMON BENEFIT" FUND**

The Funeral Home Defendants respectfully submit this Response to Plaintiffs' Motion for Entry of an Order Establishing a "Common Benefit" Fund.

**I. ARGUMENT AND CITATIONS OF AUTHORITY**

The Plaintiffs' Steering Committee ("PSC") has requested that the Court establish a "Common Benefit" Fund to pay for the cost of services and expenses incurred by the PSC on behalf of the class. The Funeral Home Defendants do not object to the creation of such a fund, but the Defendants raise one notable objection to the proposed procedure for implementing the fund.

The Funeral Home Defendants object to the role that they are required to accept with respect to the "Common Benefit" Fund. Specifically, paragraph 5 of the Proposed Case Management Order provides as follows:

All amounts paid pursuant to this Order are to be withheld by the defendants from any payments made by or on behalf of defendants to settle claims or to satisfy judgments. The withheld sums are to be deposited into an account to be established by Plaintiffs' Liaison Counsel in this MDL litigation. When the account is established, Plaintiffs' Liaison Counsel shall provide the relevant routing

information to Defendants' Liaison Counsel.

The Funeral Home Defendants object to serving as the buffer between the PSC and counsel for individual Plaintiffs. The Funeral Home Defendants should not have the responsibility of calculating the amount of money that should be withheld, withholding the money and depositing it in a separate account. If any problems arise between Plaintiffs' counsel on this issue, the Funeral Home Defendants will be stuck in the middle of the dispute.

Instead, the Funeral Home Defendants propose that any settlement be paid to settling Plaintiffs' counsel with that counsel having the responsibility of depositing the correct amount in the "Common Benefit" Fund. Alternatively, the Funeral Home Defendants could deposit the entire settlement amount in the "Common Benefit" Fund with the escrow agent disbursing the funds as agreed between Plaintiffs' various counsel.

## **II. CONCLUSION**

For the reasons discussed herein, the Funeral Home Defendants respectfully request that the Court, when establishing the PSC's proposed "Common Benefit" Fund, require Plaintiffs' counsel, not Funeral Home Defendants, to insure that the proper amount of any gross monetary recovery is deposited in the "Common Benefit" Fund.

Respectfully submitted this \_\_9th\_\_ day of October, 2003.

**BRINSON, ASKEW, BERRY, SEIGLER,  
RICHARDSON & DAVIS, LLP**

By: \_\_\_\_\_

Robert M. Brinson

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Lead and Liaison Counsel for  
Defendant Funeral Homes

**CERTIFICATE OF SERVICE**

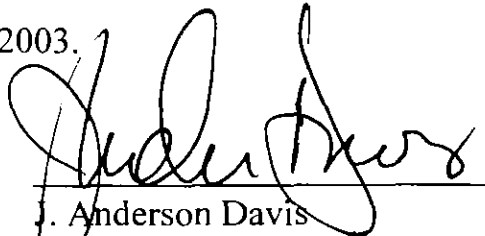
This is to certify that I have this day served counsel for all parties with a copy of the within and foregoing **Funeral Home Defendants' Response to Plaintiffs' Motion for Entry of an Order Establishing a "Common Benefit" Fund** by causing a copy of same to be placed in first class U.S. mail with adequate postage affixed thereto and addressed as follows:

Robert H. Smalley, III, Esquire  
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Frank L. Jenkins, Esquire  
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15 South Public Square  
Cartersville, GA 30120-3350

This 9th day of October, 2003.

  
J. Anderson Davis

**CERTIFICATE OF SERVICE**

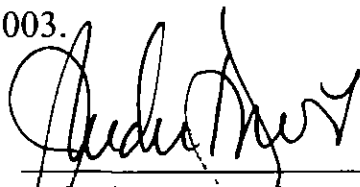
This is to certify that I have this day served counsel for all parties with a copy of the within and foregoing **Funeral Home Defendants' Motion to Allow Substitution of Their Previous Response to Plaintiffs' Motion for Entry of "Common Benefit" Fund** by causing a copy of same to be placed in first class U.S. mail with adequate postage affixed thereto and addressed as follows:

Robert H. Smalley, III, Esquire  
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This 14th day of October, 2003.

  
\_\_\_\_\_  
J. Anderson Davis